

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GERALD PROPHETE,

Plaintiff,

- against -

MEMORANDUM AND ORDER

13-CV-1214 (RRM)(JO)

OFFICE OF THE STATE COMPTROLLER
OFFICE OF UNCLAIMED FUNDS,

Defendant.

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ROSLYNN R. MAUSKOPF, United States District Judge.

Plaintiff Gerald Prophete brings this *pro se* complaint against the New York State Office of the State Comptroller Office of Unclaimed Funds. Plaintiff's request to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 is granted for the limited purpose of this Order. For the reason set forth below, the action is dismissed pursuant to Fed. R. Civ. P. 12(h)(3) and 28 U.S.C. § 1915(e)(2)(B).¹

DISCUSSION

Plaintiff alleges that he filed a claim with the Office of Unclaimed Funds for unclaimed funds identified under account number 007710406.² (See Compl. (Doc. No. 1) at 1.) That office responded with a letter indicating that the specified account "ha[d] information indicating that this property belongs to a different Gerald Prophete." (*Id.*, Ex. F-06.) In response, plaintiff filed this action. Plaintiff states, however, that he seeks no remedy beyond a "better inquiry" by defendant "for future reference." (See Compl. at ¶ IV.) This fails to state a claim for relief.

¹ The Court is mindful that a "*pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citation omitted). Generally, if a liberal reading of the complaint "gives any indication that a valid claim might be stated," the Court should grant leave to amend. *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) (quoting *Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 795 (2d Cir. 1999)). Under the *in forma pauperis* statute, however, the Court must dismiss the complaint or any portion thereof that "(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B).

² The complaint in this case is nearly identical to the complaint filed by plaintiff on February 26, 2013. (See Docket No. 13-CV-1057 (RRM)(JO).) That action was dismissed on March 1, 2013. (*Id.*) The only difference here is that plaintiff now alleges that he provided defendant with his identification and Social Security card and plaintiff no longer seeks damages. (See Compl at 1, Ex. A-01.)

Moreover, even if a “better inquiry” were construed as a request for injunctive relief, plaintiff’s complaint fails to suggest a proper basis for federal subject matter jurisdiction. *See* 28 U.S.C. §§ 1331, 1332. If the Court “determines at any time that it lacks subject-matter jurisdiction, the Court must dismiss the action.” Fed. R. Civ. P. 12(h)(3); *accord Cave v. East Meadow Union Free Sch. Dist.*, 514 F.3d 240, 250 (2d Cir. 2008). This obligation is independent of a challenge by any party. *See Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999) (“[S]ubject-matter delineations must be policed by the courts on their own initiative even at the highest level.”); *Wynn v. AC Rochester*, 273 F.3d 153, 157 (2d Cir. 2001).

CONCLUSION

For the forgoing reasons, the complaint is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).³ The Court further certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith and therefore *in forma pauperis* status is denied for purpose of an appeal. *See Coppededge v. United States*, 369 U.S. 438, 444-45 (1962). The Clerk of Court is directed to close this case and to mail a copy of this Order and the accompanying judgment to plaintiff *pro se*.

SO ORDERED.

Dated: Brooklyn, New York
March 18, 2013

Roslyn R. Mauskopf

ROSLYNN R. MAUSKOPF
United States District Judge

³ The Court declines to exercise supplemental jurisdiction over any state law causes of action that may have been asserted in the complaint, and offers no opinion on any such claims.